

**REMARKS**

Reconsideration and allowance of this application are respectfully requested. Claims 2-3 and 7-8 are cancelled. Claims 1, 4-6, and 9-10 remain in this application and, as amended herein, are submitted for the Examiner's reconsideration.

In the Office Action, claims 1, 4-6 and 9-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ro (U.S. Patent Application Publication No. 2002/0150123) in view of Kim (U.S. Patent No. 5,859,846), and claims 3 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ro and Kim in view of Terao (U.S. Patent No. 7,187,844). Claims 3 and 8 are cancelled. Applicants submit that the remaining claims are patentably distinguishable over the relied on sections of the references.

Independent claims 1, 6, and 10 have been amended to more clearly show the differences between the claimed features and the relied on art including incorporating features previously called for in claims 3 and 6. No new matter has been added by these changes. Support for these changes is found at, e.g., Fig. 6 and pages 17-18 of the specification.

As amended herein, claim 1 recites:

in which the encoding means controls the audio-data output control means to fade-out the audio data to be encoded and then stops an encoding process when an area occupied by data in the storage means is larger than a predetermined value, and controls the audio-data output control means to fade-in the audio data to be encoded and then performs the encoding process when the area occupied by the data in the storage means is smaller than the predetermined value[.]

(Emphasis added.) Neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means

to fade-out audio data to be encoded. Moreover, neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means to fade-out audio data to be encoded when an area occupied by data in storage means is larger than a predetermined value. Additionally, neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means to fade-out audio data to be encoded and then stopping an encoding process when an area occupied by data in the storage means is larger than a predetermined value. Further, neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means to fade-in audio data to be encoded. Still further, neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means to fade-in audio data to be encoded when an area occupied by data in storage means is smaller than a predetermined value. Yet further, neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao disclose or suggest encoding means controlling audio-data output control means to fade-in audio data to be encoded and then performing an encoding process when an area occupied by data in storage means is smaller than a predetermined value.

Rather, such section of Terao merely describe that a processing unit applies fade-out processing and fade-in processing to audio data and outputs it to input buffer memory. (See col.5 ll.40-44.) The section is not concerned with the features set out in the above excerpt of claim 1.

Neither the relied on sections of Ro nor the relied on sections of Kim overcome the deficiencies of the relied-on sections of the relied-on sections of Terao.

It follows, for at least these reasons, that neither the relied on sections of Ro, the relied on sections of Kim, nor the relied on sections of Terao, whether taken alone or in combination, disclose or suggest the apparatus set out in claim 1. Claim 1 is therefore patentably distinct and unobvious over the relied on sections of the references.

Independent claims 6 and 10 each call for features similar to those set out in the above excerpt of claim 1. Claims 6 and 10 are therefore each patentably distinct and unobvious over the relied on sections of Ro, Kim, and Terao at least for the same reasons.

Claims 4 and 5 depend from claim 1, and claim 9 depends from claim 6. Therefore, each of these claims is distinguishable over the relied on art for at least the same reasons as the claim from which it depends.

Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 103(a).

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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